

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5302 of 1995

WITH

CIVIL APPLICATION NO. 1750 OF 1996

A N D

FIRST APPEAL No 2412 of 1995

WITH

CIVIL APPLICATION NO. 1751 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

RUPERA TRANSPORT CO

Appearance:

MR NS SHEVADE for Petitioner

MR MG NAGARKAR for Respondent No. 1

CORAM: B.C. PATEL & N.N. MATHUR, JJ.

DATE: 01.10.1996

The present appeals are arising out of the proceedings initiated before the City Civil Court, (Court No. 13) at Ahmedabad. After the award in question was filed before the Court, the Court issued notice under section 14 (2) of the Arbitration Act, 1940 (hereinafter referred to as the Act). The present respondent raised an objection and submitted that the Union of India came to know about the filing of the award by the Arbitrator on 9.1.1989, as per the affidavit filed by Mr. P.K. Meena working in DRM office, Jodhpur, Rajasthan. The application for setting aside the award should have been filed, as contended by the present opponent, within a period of 30 days, in view of the provisions of Article 119 (b) of the Limitation Act, and the period of 30 days expired on 3.2.1989. As within the prescribed period, application for setting aside the award was not filed, it was prayed that the application should be rejected. It is admitted position that the application has been lodged on 1.3.1989. Learned Judge accepted the contention raised by the respondent and held that the Railway Authority (Union of India) filed the application to set aside the award under section 30 read with section 33 of the Arbitration Act 1940 only on 1.3.1989, i.e. after the expiry of the period of limitation as prescribed under section 119(b) of the Limitation Act, and, therefore, dismissed the application.

2. On behalf of the appellant, Mr. Shevade, learned advocate submitted that the trial Court has seriously erred in relying on the decision of the Bombay High Court reported in AIR 1983 BOMBAY 76. He pointed out that section 14 of the Act is in two parts, and looking to the scheme of the Act, the period of limitation is required to be reckoned on the basis of sub-section 2 of section 14 and not under sub section 1 of section 14 of the Arbitration Act.

3. Section 14 of the Arbitration Act reads as under :-

14. Award to be signed and filed. - (1). When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2). The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in the Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3). Where the arbitrators or umpire state a special case under cl. (b) of Sec. 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of the award.

4. Thus, it is very clear that the section is in two parts. Sub-section (1) provides for giving notice in writing to the parties of the making and signing of the award and of the amount of fees and charges payable in respect of the arbitration and award. That section does not refer to the action taken by the Arbitrator or umpire in filing the award in the competent Court.

5. Section 14 (1) of the Act refers to intimation to the parties of making an award. If the award is filed at the instance of the party to the arbitration proceedings, sec. 14 (2) will apply. In the instant case, arbitrator has suo motu filed the award in the Court. Sec. 14 (2) of the Act does not preclude the arbitrator from filing the award and once the award is filed in the Court, the Court has to issue notice to the parties and infact notice has been issued in this case as prayed by the Arbitrator. Section 33 of the Act refers to challenge to the existence or validity of the an arbitration award which reads as under :-

33. Any party to an arbitration agreement or of any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits;

Provided that where the Court deems it

just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

6. An application was submitted to set aside the award, challenging the validity of the award on several grounds. What Mr. Nagarkar, learned Advocate says is that if the party to the proceedings is intimated about making of an award, then within thirty days from the date of knowledge of making an award, an application should be submitted. One has to look to the provision contained in the Limitation Act, 1963. Article 119 reads as under :

Description Period of Time from which
of suit limitation period begins
 to run.

119. Under the
Arbitration
Act, 1940-

(a). for filing in Thirty days The date of
the court of an award service of the
 notice of making
 of the award.

(b). for setting aside Thirty days The date of
an award or getting an service of the
award remitted for notice of the
reconsideration. filing of the
 award.

Reading the aforesaid Article, it is clear that if an application is to be filed in the Court, for the filing of an award in the Court, the application is to be made within 30 days from the date of service of notice of the making of the award. This will not apply in the instant case. Article 119 (b) refers to making of an application for setting aside the award. The same is to be made within 30 days from the date of service of the notice of filing the award and not of making of the award. In view of this, it cannot be said that court should have been moved within 30 days for setting aside the award from the date of service of notice of the making of the award. In our opinion, the phrases "making of the award" in Article 119 (a) and "service of the

notice of the filing of the award" in Article 119 (b) make it clear and leave no doubt that an application for setting aside the award is maintainable if filed within a period of 30 days from the date of service of the notice of the filing of an award. Therefore, period of limitation is to be reckoned from the date of service of notice by the Court of filing the award in the Court and not of notice to the parties of making of an award by the Arbitrator.

7. In the case of INDIAN RAYON CORPN. LTD Vs, RAUNAQ & CO. PVT. LTD. reported in AIR 1988 SC 2054, the Apex Court held as under in paragraph 10 of the judgment :-

"The fact that the parties have notice of the filing of the award, is not enough. The notice must be served by the Court. We reiterate again that there must be (a). filing of the award in the proper court; (b). service of the notice by the Court or its office to the parties concerned; and, (c). such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and as at present under Cl. (b) of Art. 119 of the Act, the limitation expires on the expiry of the thirty days of the service of that notice for an application for setting aside of the award. The importance of the matter, which need be emphasised, is the service of the notice by the Court.

8. In the instant case, considering the notice issued by the Court, it is undisputed that the application is in time. Therefore, F.A. No. 5302 of 95 is required to be allowed, and is allowed. Order passed by the City Civil Court on 21.12.1993 in C.M.A. No. 195/89 is quashed and set aside.

9. So far as F.A. No. 2412/95 is concerned, as a consequence of our allowing F.A. No. 5302/95, F.A. No. 2412/95 is required to be allowed. This appeal, therefore, is also allowed. The trial Court has drawn a decree in terms of the award and has also awarded interest at 12% from the date of the award till realisation. We have held that the application for setting aside the award is filed in time and therefore, the impugned order passed by the City Civil Court, Court No.13, Ahmedabad in C.M.A. No. 36/89 on 21.12.1993, is also quashed and set aside.

10. It is directed that the trial Court will consider the application for setting aside the award and decide the same at the earliest, preferably within a period of six months from today.

Both the appeals are allowed accordingly. No order as to costs.

Resultantly, there will be no orders in the Civil Applications and they stand disposed of accordingly.

csm./